IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4399 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJARAT INSTITUTE OF DESERT ECOLOGY

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. Special Civil Application No. 4399 of 2002

MR AKIL KURESHI for Petitioner No. 1

MR BB NAIK for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 24/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr BB Naik, learned counsel for the respondents waives service of rule on behalf of the respondents. At the request of the learned counsel for the parties, the matter is taken up for final disposal today.

2. The petitioner is a trust set-up by the Government of Gujarat as a result of a Memorandum of Understanding with the Jacob Blaustein Institute of Desert Research, Israel in September, 1993, for setting up an institute for research on desert and desertification. Accordingly, the Gujarat Institute of Desert Ecology, the petitioner herein, was established at Bhuj in May, 1995 and was registered as a public trust and a society. The petitioner was also registered as a trust under the provisions of the Income-tax Act. The petitioner had filed returns for the assessment years 1996-97 and 1997-98 on 30th October, 1998. The petitioner also filed an application under Section 119(2)(b) of the Act for condonation of delay in giving notice under Section 11 (1) read with Explanation 2 to Section 11 of the Act and for late filing of returns before respondent No.2. That application came to be dismissed by the Commissioner of Income-tax, Jamnagar and the decision was communicated by the impugned communication dated 21st March, 2002 (Annexure F).

On the basis of the said decision, the Income-tax Officer, Gandhidham, Ward 2, Bhuj has made assessment orders for both the assessment years on 27th March, 2002. For the assessment year 1996-97, the Assessing Officer assessed income at Rs.11,77,033/- on the basis that the delay in giving option under Section 11(1) was not condoned by the C.I.T., Jamnagar and, therefore, the assessee's claim under Section 11(1) for the aforesaid amount was to be disallowed and was accordingly disallowed. For the assessment year 1997-98, the same reasoning was adopted and the income was assessed at Rs.1,43,523/-.

In this petition, the petitioner has challenged the aforesaid communication dated 21st March, 2002 as well as the subsequent assessment orders dated 27th March, 2002 for the aforesaid years.

3. At the hearing of this petition, Mr Akil Kureshi, learned counsel for the petitioner has submitted that the impugned order is illegal and passed in violation of the principles of natural justice as the petitioner -Institute was not given any opportunity of personal

hearing. Strong reliance is placed on the decision of the Karnataka High Court in H.S. Anantharamaiah vs. Central Board of Direct Taxes and others, 201 ITR 526.

4. On the other hand, Mr BB Naik, learned counsel for the respondent - authorities has submitted that the Commissioner has taken the impugned decision in accordance with the provisions of Section 119(2)(b) of the Act which does not provide for any personal hearing and, therefore, there is no infirmity in the impugned order.

5. Before proceeding further, we may quote the following principles laid down by the Karnataka High Court in H.S. Anantharamaiah (supra):-

> "The power exercisable by the Board under clause (b) of sub-section (2) of Section 119 is quasi-judicial in nature. When an authority discharges a quasi-judicial function, it goes without saying that it has to conform to the principles of natural justice. It has to afford an opportunity to the party who is going to be affected by the decision of the authority. Therefore, the Board is required to afford an opportunity of hearing to the assessee either oral or through submission of written arguments with reference to the points made against the assessee for not granting the relief sought for, by him. As long as the point held against the applicant is made known to him, and his say is obtained and the same is taken into consideration, the principles of natural justice are complied with."

6. Having heard the learned counsel for the parties, we are of the view that when decision on the question whether delay should be condoned or not entails drastic civil consequences on assessment of the petitioner-trust, the principles of natural justice are required to be read into in the provisions of Section 119 (2)(b). As per the settled legal position, whenever a quasi-judicial or even an administrative authority decides the matter which entails civil consequences to a party, the party is required to be given an opportunity of hearing.

Even the circular No.273 dated 3rd June, 1980 issued by the Central Board of Direct Taxes provides that very often trusts are not able to file the application under Section 11(1)(2) of the Act within time limit allowed by the provisions and thereafter the trusts are

required to approach the Board for condoning the delay in filing applications. With a view to expedite the disposal of applications filed by the trusts for condoning the delay, the Board has passed a general order under Section 119(2)(b) by which the Commissioners of Income-tax have been authorised to admit belated applications under section 11 (2) read with Rule 17 of the Income-tax Rules, 1962. Accordingly, all the Commissioners of Income-tax were instructed to dispose of all the applications for condoning delay under Section 11 (2) in terms of the order dated 3rd June, 1980.

The said order dated 3rd June, 1980 under Section 119(2)(b) provides that the Commissioners of Income-tax will, while entertaining such applications, satisfy themselves that the following conditions are fulfilled:-

(a) that the genuineness of the trust is not in doubt;

(b) that the failure to give notice to the Income-tax Officer under section 11(2) of the Act and investment of the money in the prescribed securities was due only to oversight;

(c) that the trustees or the settlor have not been benefited by such failure directly or indirectly;

(d) that the trust agrees to deposit its funds in the prescribed securities prior to the issue of the Government sanction extending the time under section 11(2);

(e) that the accumulation or setting apart of income was necessary for carrying out the objects of the trust.

7. The impugned order dated 21st March, 2002 was passed without giving any opportunity of hearing to the petitioner-trust, nor does it disclose whether the Commissioner of Income-tax, Jamnagar had considered the aforesaid relevant criteria laid down by the Central Board of Direct Taxes for deciding applications for condoning delay under Section 11(2) of the Act.

We are, therefore, clearly of the view that the impugned decision as communicated by the letter dated 21st March, 2002 is vitiated for non-consideration of the relevant criteria for deciding an application for condoning delay under Section 119(2)(b) of the Act. In fact, if the Commissioner had given an opportunity of

personal hearing to the petitioner, all the relevant facts could have been brought to his notice and the decision could have been taken in accordance with law.

8. For the reasons aforesaid, we quash and set aside the decision of the Commissioner of Income-tax, Jamnagar as communicated by the letter dated 21st March, 2002 (Annexure F to the petition) as illegal and direct the said authority to decide the matter afresh in accordance with law after giving the petitioner's representative an opportunity of personal hearing.

9. As far as challenge to the assessment orders dated 27th March, 2002 is concerned, since the impugned decision rejecting the application for condoning delay in the matter of exercise of option under Section 11(2) of the Act has been set aside, the question of assessment will have to be considered in light of the outcome of the application for condoning delay. In case the delay is condoned, then the petitioner will have appropriate remedy for rectification of the assessment orders which may be pursued after the outcome of the application under Section 119 (2)(b) of the Act.

10. The petition is accordingly allowed in terms of the aforesaid directions. Rule is made absolute with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)
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